



UNITED STATES PATENT AND TRADEMARK OFFICE

74
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,083	12/09/2005	Adam Giandomenico	2404-09272005a	1189
26946 7590 05/03/2007 JOSEPH S. HEINO, ESQ. 111 E. KILBOURN AVENUE SUITE 1400 MILWAUKEE, WI 53202			EXAMINER ROGERS, DAVID A	
			ART UNIT 2856	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/560,083		GIANDOMENICO ET AL.	
	Examiner		Art Unit	
	David A. Rogers		2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because reference item for the lateral manifold (reference item 10 as stated on pages 6-8) has not been included in figure 4. Furthermore, the drawings are objected to as failing to comply with 37 C.F.R. 1.84(p)(4) because reference character "10" has been used to designate both the conventional manifolds (figures 1-3) and the lateral manifold (figures 4 and 5). Finally, the drawings are objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference item 72 as seen on page 3.

2. Corrected drawing sheets in compliance with 37 C.F.R. 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 C.F.R. 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informality. On pages 7 and 8 the applicant refers to reference item 101 as the purge flow. However, reference item 101 as seen in figure 4 is not the purge flow but rather is the flow exiting the sensor (reference item 100). Furthermore, the applicant describes figure 4 as having sample tubes that are equidistant from the purge tube. See page 7. However, figure 4 does not show sample tubes (reference items 51-55) that are equidistant to the purge tube (reference item 30). In fact, basic geometry dictates that the upper sample tube (reference item 51) must be closer to the purge port than the lower sample tube (reference item 55).

Appropriate correction is required.

Claim Objections

4. Claim 10 is objected to because of the following informality. Claim 10 requires that the sample tubes be equidistant from the purge tube. This is described by the applicant in reference to figure 4 and in the specification on page 7. However, figure 4 does not show sample tubes (reference items 51-55) that are equidistant to the purge tube (reference item 30). In fact, basic geometry dictates that the upper sample tube (reference item 51) must be closer to the purge port than the lower sample tube (reference item 55). Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 2-4 and 8-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by United States Patent 4,113,434 to Tanaka *et al.*

Tanaka *et al.* discloses an apparatus for collecting and detecting particles having a manifold (reference item 10), a manifold arm (reference item 17) in communication with the manifold, sample tubes (reference item 12 and 13) in communication with the manifold arm, and a sensor (reference item 18) in communication with the manifold arm.

With regard to claim 3 and as seen in figure 4 the arm will be turned about an axis (pivot point located at the seal (reference item 22a). A motor would be required to operate the disk (reference item 33). With regard to claim 4 the arm moves laterally from one side of the manifold to the other side of the manifold.

With regard to claims 8 and 9, in operation the contents of a first sample tube (reference item 12) will flow through the sampling arm to the sensor when that tube is selected. The flow from the remaining sample tube will flow through a purge line (reference item 15).

With regard to claim 10 the sample tubes are arranged in a similar manner as shown in the applicant's figures. The purge line is also arranged in a similar manner as shown in the applicant's figures. Therefore, the sample tubes must be equidistant from the purge line just as in the applicant's device.

With regard to claims 11 and 12 the sensor is configured to measure fractions of dangerous fluids; e.g., total hydrocarbons.

Claim Rejections - 35 U.S.C. § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka *et al.*

Tanaka *et al.* teaches a manifold having a plurality of inlet sample tubes, a movable sampling arm, and a purge line. Tanaka *et al.* describes one shape as being a cylinder of about 8 cm in diameter and 20 cm long. Tanaka *et al.* does not teach a manifold that has a lateral, flat shape.

With regard to claim 5 it is considered obvious to resize a known device in order to fit that device into a required space. See also MPEP §2144.04:

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative

Art Unit: 2856

dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.).

With regard to claim 6 the sample tubes in Tanaka *et al.*'s apparatus are tightly secured to the manifold and this must inherently prevent wasted space.

With regard to claim 7 the sampling arm must have a minimum length needed to reach the sample tubes.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Tanaka *et al.* in order to resize the manifold to a preferred shape such as a lateral, flat shape.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Rogers whose telephone number is (571) 272-2205. The examiner can normally be reached on Monday - Friday (0730 - 1600). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2856

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David Rogers

Primary Examiner
Group Art Unit 2856
24 April 2007